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No. 488.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

NATIONAL MARITIME UNION OF AMERICA, affiliated with the Congress of Industrial Organizations, and JOSEPH CURRAN, JACK LAWRENSON, JOSH LAWRENCE, CHESTER YOUNG, HAROLD McCORMICK, MICHAEL McBRIDE, and CHARLES MONROE,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR REHEARING.

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Petitioners respectfully pray for a rehearing of the order of this Court dated February 13, 1950, denying their petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit.

Argument.

In *Forsythe* v. *Hammond*, 166 U. S. 506 (1897), this Court agreed to exercise its power to require a case to be certified to it where the matter in issue affects the interests of the Nation in its internal or external affairs. This expres-

sion of policy has since been reaffirmed in Rule 38 (5) (b) of the Revised Rules of this Court, as follows:

> "Where a Circuit Court of Appeals has * * * decided an important question of Federal law which has not been, but should be, settled by this Court; * * *."

We respectfully urge that the issues here involved, insofar as they affect one of the basic industries of the Nation, are of such magnitude that the decision of the court below should be reexamined by the supreme judicial authority of our country.

In peace or war, the American merchant fleet is an inseparable arm of our national economy and defense. Indeed, it is so essential to the health and safety of our country that the President did not hesitate to invoke the emergency provisions of the Taft-Hartley Law as soon as it became evident that a maritime strike for retention of the hiring hall might cripple our domestic and foreign commerce, as well as impair the national welfare.[1]

Always alert to recognize matters of national interest and concern, the press and radio were quick to attract the public's attention to the acute problem which now confronts the maritime industry as a result of the denial of certiorari in the case at bar. It is a matter of public record that the decision was featured in nationwide radio broadcasts and on the front pages of our daily press. Such conservative organs as the New York Herald Tribune and The New York Times promptly emphasized the real possibility of a disruption and breakdown in maritime labor relations.[2]

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[1] On June 14, 1948 the U. S. District Court for the Northern District of Ohio (Civil Action No. 25686) issued an injunction against petitioners under and pursuant to Title II of the Labor-Management Relations Act of 1947 (R. 933).

[2] New York Times and New York Herald Tribune, February 14, 1950; New York Herald Tribune (Editorial), February 19, 1950.

Law, of course, is not made by the press. But it is important to weigh the impact on the public interest, which the Act was ostensibly designed to further, by giving weight to the judgments of such respected organs, which reflect carefully considered appraisals of the situation. The reactions gain added effect from the circumstances that both these newspapers supported the enactment of the Labor-Management Relations Act of 1947.[3]

If the decision of the court below is allowed to stand, merchant seamen, who have been traditionally treated as wards of the court, will be deprived of the dignity and self-respect which all free men are entitled to enjoy when seeking employment.

In an industry where stability of employment does not exist, where personnel turnover is a constant factor (R. 475-476, 859), some participation in the hiring process by a union is indispensable if a labor organization is to exist and historical abuses are not to be revived (R. 464-468, 471-472, 478-482, 484, 524-538, 543-556). No comparison can be drawn between the union security problem of a labor organization representing factory workers, for example, and a maritime union's need for the hiring hall. The first is essentially a device to protect the status of the organization and thereby enable it more effectively to promote the general welfare of its members. The hiring hall, on the other hand, exists primarily to protect seamen against discrimination, not only for union activity, but also for race, creed and color (R. 536, 550). It was the means of putting an end to hiring seamen from crimps, boarding houses, saloons, or forcing them to pay for their jobs, either with money, or by catering to ship masters. It put an end

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[3] New York Times, June 24, 1947; New York Herald Tribune, August 20, 1948 (Editorial).

to the shape-up and to the practice of shipping work-aways (R. 237-238, 392, 481-484, 521-534, 545-555, 859-863).

Referring to the abominable hiring practices which prevailed in the industry prior to the advent of the hiring hall, the Annual Report of the Commissioner of Navigation, 1895, pp. 270-271, states:

> "The blood money in the Port of New York ranged from $1 to $20, sometimes more, according to the length and nature of the voyage and the rating of the seaman. As the wages paid to a seaman in this port seldom exceeded $20 per month, it will readily be seen what an exorbitant fee this was for a seaman."

The Maritime Labor Board Report to the President and to the Congress of March 1, 1940, on page 26, summarized the peculiar working conditions of merchant seamen as follows:

> "Legally, the seaman is restricted. Once he signs shipping articles, he becomes a member of a group whose rights and duties are closely circumscribed by a special code of laws. Economically he is insecure. His right to industrial self-government is often unrecognized and his collective bargaining challenged, especially when in conflict with navigation laws [*Southern Steamship Co.* v. *NLRB*, 316 U. S. 31]. Politically, he is virtually disenfranchised owing to a frequent absence at election time. Yet no group of industrial workers is asked, or expected, to show the compliance, discipline, loyalty, courage, and the spirit of self-sacrifice, demanded of seamen by the employer and the public."

Directing the President's attention to the subject of hiring, this Board on page 135 of its report stated that the issue of hiring was inevitable for two reasons:

> "First, *it is perhaps more important to the functioning of maritime than to most other labor unions that the union should be able to limit and share the employer's control of dispensing jobs.* Second, the conflict is due to the practice of maritime employers in the post-war period [World War I] of using their power over hiring to block the growth and activity of the unions." (Italics supplied.)

Grounded upon this background of experience, it is small wonder that seamen have necessarily fixed, as one of the primary conditions of employment, that they be hired *only* from their union halls.

Unless certiorari is granted, seamen will summarily be denied the opportunity of challenging the *only* judicial construction which has thus far been given to one of the most complex statutes, involving a matter of great national concern, ever to have been enacted by the Congress of the United States.

Except for the decision of the court below, the subjects of employment and collective bargaining, as governed by Sections 8 (a) (3), 8 (b) (2), and 8 (b) (3) of the Labor-Management Relations Act of 1947, particularly as they are related to its over-all purpose and design,[4] have not heretofore been interpreted by this or any other court.

Moreover, questions of constitutional law, which even the court below concedes may still be open, remain unresolved (R. 946).

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[4] Section 1 (b) of the Act reads as follows: "Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices *which jeopardize the public health, safety, or interest.*" (Emphasis supplied.)

It is unrealistic to assume that seamen, who through the unions they have supported, have waged bitter and costly struggles to dismantle the yoke of degrading and inhuman employment practices (R. 486), will readily consent to revert to the indignities to which they have formerly been exposed. As the late Justice Rutledge stated in *A. F. of L.* v. *American Sash and Door Co.*, 335 U. S. 538, 557:

> "* * * The right to prohibit contracts for union security is one thing. The right to force union members to work with non-union members is entirely another. Because of this difference, I expressly reserve judgment upon the later question until it is squarely and inescapably presented. Although this reservation is not made expressly by the court, I do not understand its opinion to foreclose this question."

We submit that the issue here involved is of such concern to the national labor problem, particularly insofar as it directly affects our national welfare, that the question posed by the late Justice Rutledge now be answered by this Court.

Conclusion.

For the foregoing reasons, and particularly because the matter in issue involves important questions of Federal Law which affect the interests of the nation in its internal and external affairs, petitioners respectfully pray this honorable court to reconsider its decision so that they may be afforded the privilege and opportunity of challenging the decision of the court below.

Dated: March , 1950.

HERMAN E. COOPER,
Counsel for Petitioners.

Counsel's Certificate.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and that it is restricted to substantial grounds available to petitioners but not previously emphasized in the manner now presented.

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